IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 58 OF 2005

Bhagirathi Ramchandra More
(since deceased, by Legal heirs) ... Appellant

V/s

Janardan Jayram Adhav ... Respondent

Mr. G.R. Rege with Ms. Leena R. Sawant for the appellant.

Mr. R.M. Nakhva with V.B. Dharvan for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 13TH JULY, 2005

P.C.:

1. The appellant has filed the present appeal against the judgment and order passed by the Joint District Judge, Ratnagiri, dated 24.11.2004 dismissing the appeal and confirming the judgment and order passed by the Civil Judge, Sr.Divn., Ratnagiri, dated 10.8.2000 decreeing the plaintiff's suit for declaration and possession of the suit land.

2. I have heard the learned counsel for both parties. Perused the record.

3. The plaintiff came with the case that, his land admeasuring 18.75 guntha of Survey No. 329, Hissa No.1 situated at Nevare, was put into possession of defendant No.2, and in lieu of it he obtained a loan of Rs.2,500/- time to time from defendant No.2. An agreement to that effect was written on 5.4.1971 between the plaintiff and defendant No.2 and the suit land was put into possession of defendant No.2. It was mentioned in the said agreement that defendant No.2 shall get the sale deed within three years of the suit property. In fact, though the agreement prima facie appears to be of sale transaction, but it was a mortgage transaction between plaintiff and defendant No.2 and the suit property is in defendants' cultivating possession as a mortgagee since 5.4.1971 till this date. Hence the suit is filed.

Defendants challenged the suit on the ground that, it was not mortgage transaction but it was an agreement to sale the property and by virtue of that he was put in possession of the suit property and on such and other grounds the suit was sought to be dismissed.

The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the plaintiff had proved that the suit transaction was mortgaged

transaction at the foot of the suit but it was not an agreement to sale. It was further held that the defendant No.2 failed to establish that the suit transaction was an agreement to sale and was covered by provision of Sec. 53 of the Transfer of Property Act. Consequently it was held that the plaintiff was entitled for decree as prayed for and the suit came to be decreed accordingly.

4. The appeal was carried to the District Court, Ratnagiri. The learned Joint District Judge, Ratnagiri, after hearing both parties on the basis of available evidence on record, came to the conclusion that the findings recorded by the learned Trial Judge were legal and proper and dismissed the appeal and hence the present appeal.

5. At the outset, it may be noted that there is no substantial question of law involved in this appeal. The only point which is sought to be raised on behalf of the appellant is in respect of interpretation of the suit document dated 5.4.1971. It is needless to mention that the question of interpretation of document is a pure question of fact and by no stretch of imagination it can be said to be the question of law, leave aside

the substantial question of law. It was submitted that the Courts below had not properly appreciated the entire evidence on record and, therefore, the matter need to be considered.

6. The suit document dated 5.4.1971 was brought to my notice which shows that it is in the nature of agreement. However, the contents thereof show that the plaintiff took an amount of Rs.1000/- as loan from the defendant No.2 time to time for his domestic expenses and thereafter on 29.3.1971 another amount of Rs.1100/- was taken to repay the land development loan and an amount of Rs.400/- was taken on the date of agreement for medical expenses purpose and, therefore, total amount of Rs.2500/- was taken at the foot of the said transaction for which purpose suit property was handed over to the defendant No.2. It was averred that for some reasons the document of sale deed could not be executed on that day, however, it was the condition that the plaintiff would execute the sale deed within three years from the date of the document. In this regard, the learned lower appellate Court Judge has observed that so far as the consideration was concerned, it was found that the loan amount which was advanced earlier was called as consideration and this itself showed that

the document was an outcome to secure the loan amount which was already advanced. In these circumstances, the contents of documents were held to be showing that the document was brought into existence as a security for loan amount and it lost its sanctity as a document of agreement to sale. I am inclined to accept this view especially when a piece of evidence on record has shown that defendant No.1 is seen to have informed Tahsildar to take mutation entry of her name as a mortgagee and subsequently it was tried to be fabricated. If at all the suit transaction was that of sale, there was no reason to defendant No.1 to approach the Tahsildar to enter her name in the revenue record as a mortgagee in the first place.

This aspect would show that the view taken by both the Courts below is quite reasonable and, therefore, concurrent findings recorded by the Courts below need not be interfered with.

In the case of **Thiagarajan v/s. Venugopalaswamy B. Koil, reported in (2004) 5 SCC 762,** the Apex Court, while considering the scope of reappreciation of evidence at the stage of second appeal, has held that the High Court cannot substitute its own findings on

reappreciation of evidence merely on the ground that another view was possible. In fact, time and again it is held by the Apex Court that the concurrent findings of facts whatsoever erroneous cannot be disturbed by the High Court in exercise of powers under Sec. 100 of the C.P.C. It is not within the domain of the High Court to investigate the ground on which the findings were arrived at by the last Court of fact, being the first appellate Court. If we take into consideration this dicta coupled with the fact that both the Courts below have appreciated the evidence on proper perspective, it will be seen that there is no scope for interference with regard to the interpretation of the statement on the basis of available evidence.

In the result, I hold that the appeal has no merits and deserves to be dismissed. Accordingly, the appeal stands dismissed with no order as to costs. Consequently, the Civil Application No. 85 of 2005 also stands dismissed with no order as to costs.

Interim relief, if any, stands vacated.

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